CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, September 8, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 8:36 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver and Kathleen Makel were present.

Item #1. Approval of the Minutes of the August 11, 2000, Commission Meeting.

The minutes of the August 11, 2000, Commission meeting were distributed to the Commission and made available to the public. Commissioner Deaver motioned that the minutes be approved. Commissioner Makel seconded the motion. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #3. Presentation of the Findings and Recommendations of the BiPartisan Commission on the Political Reform Act OF 1974 ("McPherson Commission").

Jim Porter, member of the McPherson Commission, explained the perspective of the McPherson Commission, noting that its members were committed to supporting the Political Reform Act (Act), improving the Act, and supporting the FPPC. He reported that the McPherson Commission went all over the state of California to solicit input from members of the public and participants in the political field during its eighteen-month study. Through that, he added, the McPherson Commission developed 35 recommendations and a report.

Mr. Porter stated that the study concluded that the Act is too complicated, causing people to be reluctant to participate in the political process, especially at the local level. He noted that people did not understand the conflicts of interest and disclosure requirements. He charged that the Act had become too complex in its effort to restrict public officials from voting when any conflict existed, and suggested that it would be better to have regulations which did not try to cover every possible scenario if it meant that they would be simpler to understand.

Mr. Porter cited a study conducted by Professor Bruce Cain, of the Institute of Governmental Affairs, in which participants completed the FPPC forms for a hypothetical public official, and virtually no one completed the forms correctly.

Steve Lucas, Chairman of the McPherson Commission stated that there were two considerations that he noticed as a result of the study. The first was that compliance with the Act was both time consuming and expensive. The second consideration was that there was a fear among people that they would miss a conflict or disclosure rule and have an enforcement case brought against them by the FPPC, or have a political opponent use that inadvertent error to accuse them of political misconduct.

Mr. Lucas explained that the McPherson Commission also heard testimony that the occupation and employer information disclosure was not being enforced because the regulation did not have "enough teeth" in it. He noted that the McPherson Commission had adopted recommendation #15 to deal with that problem. It proposed that recipients of contributions of $100 or more would have 60 days to ascertain the occupation and employer information about the donor, and if that information could not be ascertained in that time, the funds would have to be returned to the donor.

Commissioner Gordana Swanson joined the meeting at 8:45 a.m.

Mr. Lucas presented 16 of the 35 recommendations to the FPPC for consideration. He noted that the recommendations not being presented to the FPPC included recommendations that (1) were adopted or substantially adopted already, (2) were premature because of the FPPC's Phase 2 project, (3) implicate proposition 208, or (4) relate to private attorney general enforcement issues. He explained that the McPherson Commission will seek legislative support and hoped for support from the FPPC on some of the recommendations, and suggested that the FPPC may want to incorporate some of the recommendations as part of its projects.

Mr. Lucas noted that recommendations #2, #3, #7, #8, #9, #11, #12 and #15 relate to disclosure issues and briefly described them as follows:

Recommendation #2. Would require a statutory amendment to raise the "committee" qualification threshold from $1,000 to $5,000.

Recommendation #3. Would require a statutory amendment to raise the Major Donor qualification threshold from $10,000 to $100,000, and recommends that, over time, as the Secretary of State's office fully implements electronic filing, elimination of the Major Donor reporting because it would be redundant.

David Hulse, from the Secretary of State's (SOS) Political Reform Division noted that recommendation #3 may not work well because there is no unique identifier for individual donors on schedule A. A search for a major donor on electronic filing reports would probably find 80%-90% of the major donors, but not 100%, he stated, because there is no unique identifier.

Chairman Getman noted that names of donors to local races would not be available through the electronic filing system.

Mr. Porter pointed out that the benefit of simplicity would outweigh the inability to locate every major donor.

Mr. Lucas reminded the Commission that eliminating the major donor report was a recommendation for a future date, and that, for now, the recommendation was to increase the major donor qualification threshold, which has not been changed for fifteen years. He explained that the major donor reporting is not too difficult for politically sophisticated donors, but difficult for first-time donors. Mr. Lucas outlined difficulties faced by donors in filling out the major donor forms.

Chairman Getman noted that there was legislation pending which would require the Secretary of State's office to develop some online forms, and asked whether there would be major donor online forms.

Mr. Hulse responded that SB 1874 is asking that all campaign and lobbying forms be automated. If that bill becomes law, he explained, the SOS' office would create online screens for all registration and disclosure forms for campaigning and lobbying. He noted that California is the only state that has mandatory electronic filing, but that software was not being supplied to the filers so that they can comply with that requirement. Mr. Hulse stated that if SB 1874 is passed, the SOS would create software that would allow the major donor to process the online filing at their own work station.

Commissioner Deaver objected to raising the major donor qualification threshold from $10,000 to $100,000. He agreed that it could be raised to accommodate cost of living increases, but noted that $100,000 is too much.

Mr. Lucas stated that the threshold had not been increased for fifteen years, and that the recommended increase was not based on a need for a cost of living adjustment. The recommendation, he noted, is based on their conclusion that it is essentially duplicative reporting, and that the primary need for this kind of reporting is for the press and the academicians to research the largest political players in the state. Mr. Lucas added that the only other interest people seemed to have in major donor reports was in identifying whether the reports were filed.

Commissioner Deaver agreed, but stated that the proposed threshold was still too high.

Mr. Porter noted that Tony Miller supported a significant increase to $50,000 or $100,000.

Recommendation #7: Mr. Lucas explained that this was a "cleaning up" statute amendment that would eliminate supplemental independent expenditure reports where the same information is already being filed on the committee's normal reports in the same jurisdiction. It would also, he noted, raise the threshold for supplemental independent expenditure reports from $500 to $1,000, because $1,000 is the lowest threshold for triggering any other reporting under the PRA, other than the actual expenditure and contribution reporting within a committee that already has to report.

Recommendation #8: This recommendation, Mr. Lucas continued, has already been dealt with somewhat in SB 2076, but, he noted, the McPherson Commission's recommendation was a little more broad in that it recommended amending the statute to eliminate subvendor reporting for broadcast media and also for subvendor expenditures under $1,000, in addition to signature gathering.

Mr. Porter noted that the subvendor reports were huge, and that those reports are not as important as basic disclosure and other things.

Mr. Lucas noted that they focused on the broadcast media because the reports currently require many pages, reporting every single radio and television station with the exact dollar amount spent on those stations. Some of the reports are due before the election, he explained, and some are due after the election. This information is important to opponents, he noted, but is usually gleaned from working with their own media buyers on a weekly basis to find out what has been purchased, in order to get the information in a more timely manner.

Mr. Lucas reported that the Commission was divided on one issue during their study, regarding the amount of money, within the area of broadcast media purchase, being spent on television versus other forms of media. There was division among the McPherson Commission about whether eliminating the subvendor reporting obligations and imposing the additional requirement to identify how the media buyer spent the donation would add complexity. He noted that any Commissioner who disagreed with the recommendations of the McPherson Commission could author a minority opinion, but that all of the Commissioners felt strongly enough to adopt the whole report unanimously, and that there was no minority report.

Mr. Porter noted that there are different ways to minimize the subvendor reporting.

Mr. Lucas added that the McPherson Commission considered and rejected eliminating subvendor reporting because it could result in committees evading disclosure of "ugly" expenditures, by setting up a "straw man" in between their ultimate expenditure.

Mr. Porter noted that he recommended eliminating subvendor reporting entirely because subvendor reporting is one of the least important reports.

Mr. Lucas stated that by eliminating signature gathering and broadcast media disclosure, and raising the subvendor threshold from $100 to $1,000, the burden and size of subvendor reporting would be considerably reduced.

Recommendation #9. Mr. Lucas noted that this recommendation was also being addressed in SB 2076, and amends the statute to eliminate candidate travel schedules for in-state travel. Their view, he explained, was that disclosure of candidates' destination and dates of travel paid for by the candidate's committee, was often unknowingly violated and did not provide meaningful information to users of campaign reporting data. He noted that the expenditure is already disclosed on Schedule E, and that this

recommendation did not pertain to out-of-state travel, which may be important for the public to know.

Recommendation #12. This recommendation, Mr. Lucas stated, is the most significant of the disclosure items, amending the statute to create a quarterly filing schedule for all general purpose committees, and eliminating the special odd-year quarterly report for major donors. Currently, he explained, the committees are not primarily formed for any one election, and are required to constantly monitor election dates and apply the Act due dates for campaign reports that are triggered by the different election dates, including both state and local elections. The McPherson Commission viewed this as an unintentional trap for the uninformed, as well as an unnecessary burden. They wanted to provide both certainty and comfort and a less onerous set of requirements to the general purpose political action committees. He noted that the odd-year report is often unknowingly violated, and that the public disclosure gained by that report is minimal and is vastly outweighed by the benefit of certainty that semi-annual major donor reports every year would provide.

Chairman Getman questioned recommendation #2, noting that raising the committee qualification threshold from $1,000 to $5,000 could deprive the public of necessary information in small jurisdictions.

Mr. Lucas responded that this issue was considered, and that there was some discussion of creating two different rules for state committees and local committees, but that suggestion was rejected because it would further complicate and confuse. He noted that local jurisdictions can adopt at the local level more stringent reporting requirements.

Mr. Porter added that the threshold had not been changed in fifteen years.

Chairman Getman suggested that the problem of complexity could be addressed by developing a short, simple form for smaller committees, instead of raising the threshold, which could potentially miss some big donors.

Mr. Lucas responded that he could not speak on behalf of the McPherson Commission, but that speaking for himself, there would be merit to a simple form that only focuses on monetary and non-monetary contributions, not expenditure reporting.

Commissioner Swanson noted that “local” can be defined in different ways, and questioned whether the McPherson Commission had set up population guidelines for identifying the meaning of “local.”

Mr. Lucas responded that the McPherson Commission tried to stay away from creating a distinction between “state” and “local,” and that the distinction should be on the dollar threshold. They are troubled, he stated, that the costs of complying with the Political Reform Act could take up a disproportionate amount of the cost of a campaign.

Chairman Getman stated that a number of people in the agency also took Professor Cain's reporting experiment, including Chairman Getman, and she experienced the frustration faced by people completing the forms. She was struck by the fact that the mistakes she made were those that would not trigger an enforcement action, and she suggested that the FPPC educate the public as to what types of mistakes trigger enforcement actions, and that help is available from the FPPC.

Mr. Porter noted that people would be reluctant to call the agency for help, just as people are reluctant to ask the IRS for help filling out tax forms.

Mr. Lucas agreed that Chairman Getman's suggestion was worthy of consideration, but noted that it would be difficult for the FPPC to tell people not to worry about filling out certain portions of the forms. He also noted that some members of the public are afraid of the FPPC, just as there is some public fear of the IRS. He suggested that some sort of outreach could be done to let people know that the FPPC wants to help people.

Mr. Lucas noted that guidance should be provided to the public regarding how to deal with amendments to reports.

Mr. Porter reiterated that no one was able to fill out the forms correctly.

Mr. Lucas stated that the current FPPC forms are excellent in terms of disclosing information, but noted that the McPherson Commission was addressing the other side of the issue, emphasizing simplicity and user ability to use the forms.

Mr. Lucas asked that the FPPC consider discussing recommendations #2, #3, #7, #8, #9, and #12 as part of a bigger, broader campaign report.

There was no objection from the Commission.

Mr. Lucas noted that the McPherson Commission would be looking for a legislative author to deal with recommendations #11 and #15 in early 2001, and advised the Commission that they hoped the FPPC will support that legislation.

Recommendation #11, Mr. Lucas stated, would amend the PRA to eliminate gift reporting of gifts from outside the jurisdiction of the public official, and would eliminate from the definition of gifts widely attended receptions. It would be meant to mirror the federal rule, and would apply the same rule applied to sources of income from outside the jurisdiction to sources of gifts from outside the jurisdiction. That is, if the donor is outside the jurisdiction, he explained, and neither does business in the jurisdiction nor plans to do business in the jurisdiction, then the gift would not be reportable.

Chairman Getman questioned whether the gift would be subject to gift limits.

Mr. Lucas did not know, but stated that he would find out. He offered to address the gift limit question with the legislative author.

Mr. Porter ask Mr. Lucas whether this was the recommendation that addressed the situation where a public official may go to a luncheon and drink a beverage, and that a share of all of the expenses of the event are thrust upon the public official.

Mr. Lucas responded that it was. He noted that it was a late addition to the report, and therefore no statutory language had been developed yet, but that when the language was developed, special care would be taken to ensure that no large loopholes would be created.

Chairman Getman adjourned the meeting for a break at 9:40 a.m. The meeting reconvened at 9:54.

Chairman Getman introduced Sue Ellen Wooldridge, who would be FPPC General Counsel beginning Monday, September 11, 2000.

Commissioner Swanson noted that the rules are very complicated because they deal with those people who try to circumvent the law, and that it creates great difficulty for law-abiding citizens. She noted that Los Angeles County Supervisors have a special account for gifts, which is outside of the realm of contributions, and is used for travel, boats, and vacations. She asked whether there was a way to eliminate that type of account.

Mr. Lucas responded that it sounded like Commissioner Swanson was referring to "office holder accounts," and that the McPherson Commission did not study that issue. He noted that fashioning the rules and trying to plug loopholes in the rules has been the natural process of developing the PRA over the past 25 years, that it has been the natural process of the Federal Elections Commission and is currently an issue with the stealth PACs. At a certain point, he stated, it may be time to give up trying to go after the shrewdest manipulators of the law, and instead consider fashioning a law that is understandable to citizens who want to participate. A lot of the recommendations, he continued, will result in some loss of non-essential disclosure, but the McPherson Commission thought that many years of plugging loopholes to the PRA has resulted in ordinary citizens finding it too difficult, too expensive, or to onerous to comply with.

Mr. Lucas discussed an example of a non-profit organization creating new organizations, and then re-establishing themselves as a new entity not regulated by the new law.

Chairman Getman stated that Mr. Lucas' example could be dealt with as an enforcement case under existing law.

Mr. Lucas noted that not all of the manipulators are violating the law, and his concern was that creating new requirements to ensure that loopholes are plugged imposed further burden on those people who are trying to comply.

Recommendation #15, Mr. Lucas explained, would also require a legislative author, and will return to the FPPC for legislative support. It would require that a donation be

returned to the donor if the employer information is not received within sixty days of receipt of the donation.

Professor Bruce Cain, of the Institute of Governmental Affairs (IGA), introduced the studies conducted by his organization in order to bring more information to the McPherson Commission about the problems faced by the public when trying to comply with the PRA.

Mr. Cain noted that, while much information can be gleaned from public hearings, that information could be limited by reluctance from the public to attend or to speak up about the issues they face. He explained that the IGA chose to use a focus group study instead of a survey because it was a lot cheaper and because it gave them a better understanding of the difficulties. There were a half dozen focus groups involved in the study, he added, which included people who (1) had to fill the forms out (professional and volunteer treasurers, accountants, experienced candidates, and one-time candidates), (2) people who used the forms (journalists), and (3) political attorneys and some members of the reform community.

The second research strategy was an experiment that tested both the politically experienced and novices to see whether compliance with the PRA was deterring people from running for political office. He noted that the study had some flaws and that the study could be redesigned to be more effective, but pointed out that the methodology was intriguing and could be used in the future.

The results of the experiment, Mr. Cain explained, showed that experienced people make fewer mistakes. This suggests, he continued, that from an enforcement standpoint, it might be better to enforce the PRA less strictly on the novice. He also noted that the experiment suggested that the forms needed to be simplified.

Chairman Getman noted that the experiment was beneficial in helping staff understand how the forms could be improved, and that, as a result, new forms would be tested internally.

The third research strategy, Mr. Cain explained, was more conventional, utilizing FPPC statistics to determine how long it takes to resolve enforcement cases, the trends in fines, and the priorities of the FPPC and whether the enforcement efforts were following those priorities. From this data, he learned that the FPPC is besieged with a lot of information from the public, including complaints of violations that have nothing to do with the PRA, and that the FPPC has to do an enormous amount of screening of those complaints.

Mr. Cain stated that the three studies are available in the appendix of the McPherson Commission report and on the IGA web site, along with all of the recommendations. He hoped to bring some attention to disclosure, which he believed might be the most valuable part of political regulation.

Mr. Lucas explained the recommendations related to conflict of interest regulations. He stated that many of those recommendations may be premature in light of the current FPPC Phase II project, but noted that two of their recommendations may be outside of the scope of the Phase II project, and presented them to the Commission for future consideration.

Recommendation #16, Mr. Lucas stated, would amend various conflict of interest statutes to consolidate them within the PRA, and to be interpreted by a single agency, the FPPC. He noted that this would include Section 1090 and other conflict provisions. Through this, he added, the public would be able to find all the conflict provisions in one place, would have one jurisdiction to turn to for answers, which would provide some consistency in interpretation.

Mr. Lucas did not know how many conflict laws exist, but he felt that underscores the need to put them all in one place. Section 1090, he noted as an example, is often overlooked by the public because, when finished studying Section 87100 requirements in the PRA for conflicts of interest, a person might think their obligations were complete.

Commissioner Deaver agreed, noting that both of the conflict of interest recommendations were great ideas.

Recommendation #17, Mr. Lucas explained, would amend the PRA to centralize all the local conflict of interest codes under the authority of the FPPC. Currently, he noted, the FPPC provided technical assistance to local jurisdictions adopting codes, but because the FPPC does not have authority over all of the codes, there is no consistency between the local codes.

Chairman Getman was concerned that it would change dramatically the nature of the FPPC, making it a much bigger agency with a much bigger mandate.

Mr. Lucas responded that the recommendation, in concept, merits attention, but that, once studied, it might be a very imposing project. If it can be done, he noted, it could be very worthwhile.

Recommendation #24, Mr. Lucas stated, recommends that the FPPC adopt a general statement of enforcement principles. He did not know whether other enforcement agencies had similar statements.

Mr. Cain explained that this recommendation was suggested by Dan Lowenstein, because there are so many different types of enforcement actions, and that a statement of priorities outlining where resources would be spent would give people an understanding of the priorities, and would allow the agency to focus more on egregious violations instead of trivial violations.

Mr. Lucas noted that the general sense of the McPherson Commission was that the Enforcement Division should have written guidelines so that their enforcement activities

were not complaint driven. There is a fear, he stated, that people are investigated for violations because they have the bad luck to have an opponent file a complaint against them, and not because their violation is a more serious one. A written policy that attempts to delineate the different levels of enforcement and how they should be treated, including "parking ticket" type violations or warning letters, eliminates the complaint-driven aspect of enforcement.

Chairman Getman noted that cases seeming minor to one person may not be considered minor by another person. She stated that, while everyone wants to devote the greater amount of resources to the more serious cases, a public outcry to handle a private attorney general action case consumes a lot of resources and limits the Commission's ability to pursue the more serious violations.

Commissioner Deaver stated that the Commission has been trying to educate the public as to what their priorities are. He added that he was reluctant to issue an enforcement policy statement because it would only be as good as whoever happens to be Chairman of the FPPC. He noted that the current Commission has made it clear the money laundering is the most serious violation. He suggested that the FPPC had a responsibility to educate the public, and especially the editorial writers of the state of California, to let them know what the Commission views as important, and to get their input regarding the priorities.

Commissioner Deaver stated that enforcement cases needed to be resolved in a more timely manner.

Chairman Getman stated that the Commission is proposing to write a statement of enforcement principles for next year, and to study whether the enforcement programs are having the effect hoped for. She noted that she was still unclear as to what the McPherson Commission wanted to include in the enforcement policy, other than establishing priorities.

Mr. Lucas responded that the FPPC should establish its own enforcement priorities and not allow the complaint process to establish the enforcement priorities. He agreed that establishing those clear guidelines would be difficult, but stated that enforcement division will have pressures to allocate resources based on the complaints that come in if there is no policy.

Commissioner Swanson noted that Mr. Lucas was probably referring to the cases that are brought to enforcement staff during an election, and the alleged violations are minor in nature.

Mr. Lucas agreed, and noted that it is done both during and after a campaign. There is also, he noted, the post election studies that look for violators.

Commissioner Makel noted that public outcry, such as in the private attorney general actions, has not been aimed at establishing priorities, but had to do with fairness and process.

Mr. Lucas agreed, and noted that the McPherson Commission's private attorney general recommendations would deal with that issue. He pointed out that the FPPC's new streamlined approach should be reviewed, because violations are discovered by computer searches of the Secretary of State's computer files. He questioned whether a maximum fine of $2,000 is always appropriate, because he did not agree that the public harm was as great since the information is available to the public by doing computer searches.

Mr. Porter stated that the current FPPC does take into consideration the public harm. He added that the FPPC could put those considerations in a priority policy that would keep the focus on their enforcement priorities.

Mr. Lucas noted that this policy would protect the FPPC from the allegation that they are acting on a complaint for political purposes.

Mr. Lucas suggested that a violator who amends a report voluntarily should be treated more leniently because the violator has brought it to the attention of the FPPC.

Chairman Getman stated that finding violations through computer searches was a good system. It allows quicker enforcement actions, she explained, and she noted that enforcement actions should still be taken against violators even though the information is more readily available.

Mr. Lucas responded that the only disagreement he had was regarding the $2,000 fine, noting that an inadvertent violation, which was brought to the attention of the FPPC by the filer, might not deserve the $2,000 fine.

Chairman Getman agreed that the FPPC should look at the new enforcement processes and the fine policies next year.

Mr. Lucas pointed out that there is no mechanism under state law to notify unsophisticated donors that they have a twenty-four hour filing requirement.

Chairman Getman stated that it is the responsibility of the recipient to advise donors of their filing obligations.

Mr. Lucas responded that this happens much more with ballot measures than with candidates, and, as such, the donors do not present a "corrupting influence." He noted that with each new ballot measure, there are new donors.

Chairman Getman reported that the FPPC has begun a program of notifying potential major donors, and that the FPPC had received complaints from the public because they had been sent the notification even though they were not major donors. She asked that, as the FPPC develops new programs like expedited fines, quicker actions, and affirmative notices, the public contact the FPPC if it is being done incorrectly or has unanticipated consequences. She also asked that the public be patient with the FPPC through these changes.

Mr. Porter stated that everything he has heard about the Commission since Chairman Getman was appointed has been positive.

Recommendation #29, Mr. Lucas explained, is not quite ready for consideration, but proposes that sometime in the future a member of the McPherson Commission meet with enforcement staff to determine whether the statute could be amended to permit informal disposition of cases without a formal hearing.

Mr. Lucas noted that the McPherson Commission would be looking for a legislative author for a statute amendment for recommendations #31 and #32.

Recommendation #31, Mr. Lucas stated, would change the current fining policy from $2,000 to a range of $50 to $5,000. By extending that range, he noted, the Commission and the Enforcement Division would have more discretion and latitude for minor to more serious violations. This amount reflects cost-of-living increases.

Commissioner Swanson noted that the cost-of-living does not always have relevance to the cost or expenditures of an election.

Mr. Lucas agreed, and noted that the top expenditures on campaigns increase dramatically with each election cycle.

Recommendation #32, Mr. Lucas reported, would amend the statute to require notification of subjects of complaints, and to provide them with an opportunity to respond. It would include the significant caveat that it would be within the discretion of the FPPC and the Enforcement Division to not provide such notification in cases where it would jeopardize the investigation.

Recommendation #34, Mr. Lucas explained, will be presented to the Franchise Tax Board for their input.

Jim Stevens, from the Franchise Tax Board (FTB), commented that this recommendation takes on an almost punitive tone and implies that FTB has been somewhat remiss in this area. He advised the Commissioners that it is the policy of FTB to work very closely with the FPPC toward consistency.

Mr. Lucas responded that the biggest issue presented to them related to accrued expenditures, and how the FTB deals with them as audit findings. He stated that there is a perception that the FTB has developed rules that do not match the FPPC rules on what has to be reported for accrued expenditures

Mr. Stevens stated that FTB was entirely consistent with the FPPC with regard to accrued expenditures. He noted that one Focus Group (page 61 of the McPherson Report) states that the FPPC says it is acceptable not to include addresses of radio stations as subvendors or vendors. Mr. Stevens did not believe that the FPPC would have said that.

The implication, he noted, was that the FPPC tells people how to report something, and FTB is not auditing those items

Technical Assistance Division Chief Carla Wardlow stated that she was also baffled by that assertion. She checked advice files back to 1976 and was unable to find anything in writing advising that those addresses were not required to be reported.

Mr. Lucas stated that he could get the source of the statement.

Mr. Stevens stated that accrued expenditures are either paid by a cutoff date or they are not paid. If they are not paid, he explained, they are accrued.

Mr. Lucas questioned, as an example, whether on October 22nd, the cutoff date before an election for a reporting period, the campaign committee is required to contact each of its vendors of any type, and ask them what the value is of all services rendered during that reporting period, so that the information can be included on the report.

Mr. Stevens agreed.

Chairman Getman stated that the FPPC is not in the business of trying to do it differently than the FTB.

Mr. Lucas asked whether the FTB believed that it must follow the interpretation of the PRA by the FPPC.

Mr. Stevens replied that they did, and that the FTB had been striving to do that for 25 years.

Mr. Lucas questioned how the FTB would deal with a different interpretation by the FTB than the FPPC interpretation, on an issue of interpreting the PRA that is relevant to a FTB audit.

Mr. Stevens responded that each case is different, and subject to different interpretations, but that their goal was to be consistent with the FPPC interpretation, and noted that a part of every audit is to ensure that consistency.

Recommendation 35, Mr. Lucas explained, is an FPPC issue that the McPherson Commission supports, which would allow the FPPC to hire attorneys, investigators, and analysts/auditors within the investigative unit at a level that is competitive with other state agencies. This would allow the FPPC to recruit senior qualified people and retain them without fear of losing them because they have reached their peak of the salary structure within the FPPC.

Chairman Getman stated that the FPPC appreciated their support on that issue.

Chairman Getman thanked the McPherson Commission for all of their hard work.

Mr. Porter commended Mr. Lucas especially for his efforts.

Commissioner Makel commented that, while she may not agree with every recommendation of the McPherson Commission, she felt very strongly that government regulation must not ignore reality. She added that she very much appreciated and applauded the attempts of the McPherson Commission to take a very honest look at the rules and regulations.

Commissioner Makel left the meeting at 10:54.

Item #4. Adoption of the Opinion in the Matter of Lucas Opinion Request (O-00-157).

Legal Division Counsel Scott Tocher presented the Opinion finding that Steven Lucas' client, Glenn Bystrom, did not participate personally and substantially in two tiers of audits conducted by his agency during his tenure there, except with respect to those audits which actually came before the five-member Board of Equalization. The Opinion reflects, he stated, the analysis contained in the August agenda memo.

Commissioner Makel returned to the meeting at 10:56.

Commissioner Deaver motioned that the Opinion be approved. Commissioner Makel seconded the motion. The motion passed unanimously.

Commissioner Deaver left the meeting at 10:58 a.m.

Item #5. Pre-adoption Discussion: Conflict of Interest Regulations ("Phase 2"): Projects I, J, and K ("Public Generally" Exception). Pre-adoption discussion of proposed amendments to Regulations 18707, Repeal and Reenactment of Regulation 18707.1 with Amendments, Renumbering of Regulation 18707.1 to 18707.2 with Amendments, Renumbering of Regulation 18707.2 to 18707.3 with Amendments, Adoption of Regulations 18707.8 and 18707.9, and Renumbering of Regulation 18707.3 to 18707.7.

Assistant General Counsel Luisa Menchaca explained that the tentative decisions reached at the July Commission meeting were reflected in the regulatory language presented in the staff memo dated August 28, 2000 for the pre-adoption discussion. Staff redrafted regulatory language in response to the directions of the Commission, she noted, and explained that the decision points in the memo reflect the remaining points to be addressed.

Ms. Menchaca explained that the term "public generally" comes from the statute, and that the decision has two parts; it must first determine what the public is, then analyze the significant factors to determine if the effect on the official is "in substantially the same manner," as the effect on the public generally.

Ms. Menchaca stated that notification of the pre-adoption discussion was sent to over one hundred persons, and was also made available on the web site.

Decision 1: Ms. Menchaca presented the first decision point, explaining that the Commission requested that the staff examine more closely whether the interpretation of "public generally" as an exception is supported by the statutory language. The staff memo, she noted, outlines staff's belief that the current treatment by the Commission is a proper statutory interpretation. She added that if the Commission decides that the "public generally" language should not be treated as an exception, the discussion on the remaining parts of the staff memo should be deferred in order to study the regulatory language as an element vs. an exception.

Commissioner Makel stated that the staff memo was persuasive and that she was very comfortable with it.

Chairman Getman agreed, but noted that the words, "may establish as an affirmative defense" may not be necessary.

Ms. Menchaca responded that the inclusion of that language may be helpful if the exception issue should come up again in a few years, because it makes the Commission's view of that statute very clear.

Ms. Menchaca responded that staff did not feel strongly about including the language, but noted that she thought that the Commission may have wanted that language.

Chairman Getman stated that she was inclined to delete the affirmative defense language.

There was no objection from the Commission to treating "public generally" as an exception.

Decision 2: Ms. Menchaca explained that the existing language in Regulation 18707 suggests that, in every case, the public official would have to utilize the eight-step process in order to do the "public generally" analysis. If that language is deleted, she noted, it would ensure that steps one through seven would not be required for a "public generally" issue.

There was no objection from the Commission to the deletion of the bracketed language in decision 2 of the staff memo.

Ms. Menchaca introduced decisions three through nine, noting that they relate to the restructuring of the general regulation. She explained that the Commission had directed staff to separate the regulation into two regulations. The issues addressed in the regulation itself, she continued, relate to thresholds and the "5,000 individuals" test.

Decisions 3 and 4: Ms. Menchaca explained that these decisions deal with the "significant segment" that would be applicable when an individual is a disqualifying

source of income generally. The significant segment that would be applicable in that case, she noted, would be 10% or more of the population, or 5,000 individuals who are residents in the jurisdiction. She reported that, there have been no significant changes since the Commission adopted the 10% threshold rule in 1993, even though there have been changes in population. Many small cities, she added, would utilize the "10% threshold" test, and large cities would utilize the "5,000 individuals" test.

Ms. Menchaca stated that the staff recommended that the Commission keep its current structure because it continues to reflect the Commission's desire to keep both a numerical test and a percentage test to better serve both large and small jurisdictions.

There was no objection from the Commission to keeping both tests in decisions 3 and 4.

Decisions 5, 6, and 7: Ms. Menchaca stated that these decisions relate to real property interests when a conflict is triggered by real property.

Decision 5, Ms. Menchaca explained, retains a test of whether 10% of all property owners or all home owners are affected in the jurisdiction. Decision 6 creates a test of whether 10% or more of the population in the jurisdiction are affected, and Decision 7 creates a test of whether 5,000 individuals who are residents of the jurisdiction are affected. She noted that in prior staff memos, Decisions 6 and 7 were not included.

Ms. Menchaca reported that she had spoken with Mike Martello of the League of California Cities, and he indicated that the subcommittee discussed this issue and decided not to oppose staff's recommendation. Mr. Martello described an example of this issue to Ms. Menchaca which she shared with the Commission.

Ms. Menchaca explained that staff was recommending that the Commission approve Decision 5 and not Decisions 6 and 7.

Stan Wieg, with the California Association of Realtors, stated that he liked the consistency of the "10%" and "5,000" number being carried through, for people, properties, households, and for business entities as well, because it would be much easier to administer. He noted that an official still may not qualify for the "public generally" exception under the "substantially the same manner" provisions, if they apply.

Chairman Getman stated that "5,000 residents" does not make sense, but "5,000 property owners" might be better language.

Mr. Wieg agreed, noting that if 5,000 parcels within a community are affected, then it is a big enough effect in the community that it does affect the general public.

Ms. Menchaca suggested that it could read, "5,000 property owners or homeowners," and it would give both the percentage test and the numerical test.

Ms. Menchaca stated that the numerical test should not create a problem because 5,000 property owners is a significant amount.

There was no objection from the Commission to keeping Decision 5, eliminating Decision 6, and change Decision 7 to read "5,000 property owners or homeowners in the jurisdiction."

Decision 8: Ms. Menchaca explained that there was no data to suggest whether 50% of all businesses in the jurisdiction is a high or a low number. She pointed out that the 50% may have originated from the Commission's *Brown* Opinion, where 50% of property owners was not considered to be a significant segment because it was not a heterogeneous group.

Mr. Wieg stated that if 50% of the businesses in a jurisdiction were adversly affected, it would be a substantial effect on the general public, and someone who wants to participate in that discussion should be able to do so. It is related to Decision 15, he noted, both of which they tried to deal with in Assemblyman Bill Leonard's bill in attempting to say that a homogeneous business category could still constitute a substantial portion of the public. For example, he continued, if they were realtors or lawyers or whatever, it should not have to be half of all the businesses in the jurisdiction, but it could be a substantial portion of the businesses in a "10%" or "5,000" sort of ratio. He suggested that the "50%" be changed to a "10%" figure on Decision 8.

Commissioner Swanson noted that it would be consistent.

Chairman Getman agreed, but questioned what makes a group of businesses heterogeneous or homogeneous in nature for these purposes.

Ms. Menchaca explained that it could be different industries or professions, such as restaurants.

Ms. Menchaca stated that a 10% test has not yet been studied by staff, and noted that a threshold that low would eliminate the need for a special regulation dealing with a predominant industry, trades or profession because it would not need to be applied. She also noted that it would eliminate the need for a special regulation dealing with the "business climate" drafted by staff, because it would never need to be applied. She suggested that this proposal needed more study by staff.

Chairman Getman suggested that staff develop language that would be consistent with the notion of a percentage and a flat number, because there would be something to be gained by the consistency. She stated that 50% may be too high, but she was concerned that 10% may be too low.

Commissioner Deaver agreed that staff should develop another proposal.

Commissioner Swanson stated that it was important to be consistent, and that staff should look at that.

Ms. Menchaca suggested that staff could study advice letters to assess where that 50% has fallen based on facts provided to staff, and might be able to provide the Commission with some recommendations based on that information.

Chairman Getman supported that idea, and encouraged staff to develop language that establishes a threshold that is somewhat lower and makes sense, and eliminates the need to develop "business climate" and "predominant industry" language.

Decision 9: Ms. Menchaca noted that this decision related to language that staff has redrafted, adding a segment that applies to non-profit entities. She explained that the proposed percentage rate would be the same as the percentage rate applicable to businesses. Ms. Menchaca commented that data on this issue has been difficult to obtain, but that she had spoken to Michael Martello, of the League of California Cities. Mr. Martello, she explained, did not think that the difficulty would be in identifying the number of non-profit entities, but that the difficulty would be in assessing who is doing business in the jurisdiction for purposes of that decision.

Chairman Getman asked the Commissioners if they were still comfortable with treating non-profit entities and businesses the same. There was no objection from the Commissioners. Chairman Getman asked staff to bring both the business and non-profit entities issue back to the Commission, taking a closer look at the "fifty percent" recommendation.

Decision #10: Ms. Menchaca noted that staff recommended that "effect" be used in this language pertaining to government entities, instead of "benefit." She noted that staff wanted to include "all members of the public under the jurisdiction of that governmental entity," because their aim is to allow participation where government is the source of income but the particular governmental decision has some effect on all of the members of the public. The goal, she explained, was to balance against situations where a public official might make decisions that uniquely affect the public official.

Chairman Getman stated that she was comfortable with the language, as long as there was an assurance from the staff that it would be interpreted as illustrated in the "Decision a," example of the staff memo. She explained that when she first looked at that example, she was concerned that it might mean that the exception would apply only to those people in the jurisdiction who have children, and that use of the word "all" might be too harsh.

Ms. Menchaca responded that the other alternative would be to create some kind of, "significant segment" or numerical threshold language.

Chairman Getman asked whether staff could build the interpretation into the language, so that within the regulatory file there would be some sense of history. She explained that it should illustrate that when the Commission chose "all" it was not their intent to establish

an interpretation that would result in only a few situations where the language would apply.

Ms. Menchaca responded that a comment could be added to the regulation.

Ms. Menchaca noted that the language on page 5 of the proposed regulation, lines 14 through 17, was not included as a decision point because it overlaps with some other issues.

Chairman Getman questioned whether the way it was drafted left room for the argument that it can be used regardless of the type of decision that is at issue.

Ms. Menchaca responded that it would apply in any type of decision, but that it would most likely occur only when the governmental decision impacts real property.

Chairman Getman explained her concern that this language might define an owner of three or fewer units as being affected on an issue not related to rent control. She asked staff to consider moving this to the section on real property.

Ms. Menchaca suggested that staff could reference that subdivision, adding language to read, "for purposes of subdivision (b)."

Chairman Getman agreed that it would make sense to add the cross-referencing language.

Decision 11: This decision, Ms. Menchaca explained, pertained to the threshold amount in proposed section 18707.2. She noted that the Commission had approved the proposed changes in the section, and that if the threshold amount for real property is retained, the Commission would want it in this section also. She explained that it would be consistent with past advice.

There was no objection from the Commission.

Decision 12: Ms. Menchaca explained that staff had initially drafted changes to regulation 18707.4, dealing with appointed members of boards or commissions, but was concerned that the language proposed might create additional problems. She noted that staff wanted to bring the issue back to the Commission for technical changes.

There was no objection from the Commission.

Decision 13: Ms. Menchaca stated that staff had redrafted proposed regulation 18707.9 to make the regulation applicable to residential property issues. She explained that the general rule that staff used for residential real properties was already the current "public generally" regulation 18707. She urged the Commission to consider how that regulation interfaces with the new proposed regulation.

Ms. Menchaca explained that the Commission might want to establish a special rule to allow public officials to participate even when the real property interest is directly affected. She asked the Commission whether they wanted to have a special regulation dealing with this issue.

Tom Willis, representing the Greater San Francisco Association of Realtors (GSFAR), discussed two options being presented to the Commission addressing the issue of rent control. He explained that the rule could apply specifically to rent control, which would be fair to everyone, and would be easy to administer.

The other option, he continued, would be to try to create rules by studying each economic interest that might be at stake when addressing rent control, which is difficult to do. Mr. Willis likened this option to trying to mend a very old tire, because with each patch on the tire, a new pressure point emerges. One rule should apply to everyone, he said. Section 18707.9, he continued, would still allow tenants to be exempt. Owners of real property would have a separate rule. If a public official had a passive interest in a limited partnership in real property, the "business interest" economic interest model would be applied, which applies a fifty percent rule. He noted that the issue of a public official who is a landlord receiving income from a tenant was not addressed in the staff proposal.

Mr. Willis stated that one person may have three different economic interests, and noted that trying to regulate the types of economic interests in rent control would always result in disparity and anomalous results. Therefore, he argued, the Commission should adopt decision 13 option "a", or adjust Section 18707.9(a) in a manner which would make clear that "residential property" refers to any economic interest that includes residential property.

Mr. Willis noted that this would comply with the McPherson Commission recommendation for fairness and the elimination of unnecessary disqualifications, "especially in cases of landlord/landowner public officials."

Ms. Menchaca confirmed that decision 13, option "a" would apply to owners of three or fewer units and tenants, and would allow them to vote as public officials on rent control.

Stan Wieg stated that he did not agree with Ms. Menchaca's interpretation of the language. He explained that if rent control was at issue, decision 13, option "a" would recognize rent control as a special kind of issue.

Chairman Getman noted that a significant segment would still be required in that case. Ms. Menchaca agreed, noting that the general rule, Section 18707.1, could always be applied, and that the rules under discussion are only used when applicable. Therefore, a public official could go to the general rule first, she explained.

Mr. Wieg stated that he saw this proposal as being in addition to any other "safe harbor" within the system.

Chairman Getman asked whether a landlord with five units in San Francisco could vote on rent control issues under decision 13, option "a".

Ms. Menchaca responded that if at least ten percent of the real property owners were affected, the landlord could vote. She outlined the differences between the proposed rule and the proposed regulation, and noted that staff would not support decision 13, option "a". She explained that the addition to the general rule of the *Ferraro* "bright-line test," would, in her opinion, provide a significant improvement because it would alleviate a lot of confusion. The proposed regulation factors, she continued, provide some safeguards to ensure that it is not a very broad rule and the Commission could consider them if more safeguards are needed.

Polly Marshall, with the Affordable Housing Alliance in San Francisco, and the Rent Arbitration Board of San Francisco argued against adoption of option "a", which addresses rent control in general. She noted that if rent control in general is addressed, it created a special rule just for rent control. She questioned why rent control should be treated any differently than other consumer legislation. Ms. Marshall pointed out that adoption of a special rule for a highly charged political issue would set a precedent, and noted that it should be treated like any other economic interest. She stated that including it under the special rule for "rates, assessments and similar decisions" was not a good idea, because it deals with people who pay rates. She noted that there was incredible confusion in San Francisco, and supported adoption of *Ferraro* as a rule. If the Commission did not choose to adopt *Ferraro*, she added, decision 13, option "b" would work, because it treats the issue like any other economic interest.

Mr. Willis clarified that *Ferraro*, if codified, would allow a tenant to vote in all situations, while a person who owns a very small share in a limited partnership company will almost never get to vote. He noted that he did not see the distinction between owning three or four units, and pointed out that the real issue is that people are being affected on both sides of the issue. He reiterated his support of decision 13, option "a", noting that ten percent of the population or ten percent of households is a large figure that must be met in order to be included in the exception.

Mr. Willis was concerned that decision 13, option "b" was confusing, and addresses the economic interest of residential property but does not address business interests in property or a person. He suggested that if a sentence defining residential property or a sentence reading, "This regulation applies to any economic interest related to real property" were added to the language, it would resolve that issue.

Mr. Willis stated that *Ferraro* does not address the problem between looking at a business entity and ownership in real interest, noting that it only addresses ownership in real property. He did not agree that any "magic number" of properties should be used as *Ferraro* has used them to identify possible conflicts. He noted that the real concern was that a public official with 2,000 units could make a large amount of money if they can participate in a decision affecting those units. If the decision is that specialized, he pointed out, the ordinance will never affect ten percent of the population. If, he

hypothesized, ten percent of the population were affected, the tenant will have a much more significant portion of their real income, and therefore will have a much higher economic interest, affected by the decision. He stated that, on the one hand, one person may own a thousand units, and on the other hand, there may be a thousand voices against that person.

Chairman Getman stated that a person who owns a thousand units would have a much greater economic interest.

Mr. Willis responded that the person may have a higher economic interest in real dollars, but not in practical effect. He stated that the tenant will always have a much greater interest in that decision. He noted that the person on a very limited budget has a huge economic incentive.

Commissioner Makel agreed, and stated that, in rent control issues, people on both sides of the issue have a conflict.

Mr. Willis agreed, but noted that the law provides that month-to-month tenancies are not, by definition, economic interests, and therefore a tenant will almost always be able to vote.

Ms. Menchaca pointed out that staff was asked to draft the regulation with language addressing the small businesses and that staff proposed raising the possible income on business interest included in decision 13, option "e". This option, she explained, created a special rule for the landlords, and would limit the exception.

Chairman Getman agreed with Ms. Menchaca's concern, noting that the economic interest of the small landlord is very different from the economic interest of the landlord who owns a thousand units. She noted that they have been treated differently in the past because they are different economic interests, and that she had more sympathy for the smaller landlord than for the larger landlord.

Ms. Menchaca agreed that the economic interest was very different, and noted that the Commission was now being asked to adopt as a rule an exemption for huge businesses based on the type of decision being made.

Commissioner Deaver questioned what would happen to the person with a small investment, and asked what percentage of the rental units in San Francisco are owned by landlords with three or fewer units.

Ms. Marshall responded that information from the Director of the Rent Board in San Francisco estimated that at least 30,000 people in San Francisco are owner/occupants of two or three unit buildings. Under *Ferraro*, she noted, those 30,000 people can vote on an issue.

Mr. Wieg supported decision 13, option "a", noting that, in these types of situations, both sides pay, because landlords subsidize tenants. He noted that there will be many more rent control issues in California because there are not enough housing units. Mr. Wieg did not agree that the number of units owned by a landlord should be used to identify them as a business, and thereby disqualify them from voting. He stated that everyone should be allowed to vote on rent control issues.

Chairman Getman adjourned the meeting to closed session at 12:13 p.m. to discuss the following item:

Closed Session

Item #19. Discussion of Personnel. (Gov. Code § 11126(a)(1).)

The meeting reconvened in open session at 1:30 p.m.

Item #5 (continued).

Decision 13 (continued). Ms. Menchaca suggested that the Commission could add an exception to deal with the rent control type of decisions. She noted that decision 13, option "b" offered that language and included safeguards not included in option "a". Ms. Menchaca stated that staff recommended option "b", noting that it offered options which would deal with public officials who have multiple economic interests. She explained that option "b" would apply when residential real property triggers a conflict, and deals with the same general type of decisions included in option "a", but only applies in situations where there is an indirect financial effect on the official's economic interests.

Ms. Menchaca went on to describe the other safeguards in option "b", noting that it offered an option that would assure that a certain percentage of real properties in the jurisdiction are affected. Additionally, she explained, option "b" assures that the effect of a decision on the public official's residential or real property is either substantially the same as the affect on other residential properties, or it has a proportional effect. She noted that option "b" would also define "substantially the same manner" instead of requiring a case-by-case interpretation.

Ms. Menchaca explained that Decision 13 option "a" did not include language that would require that the financial effect on the public official is substantially the same as it would be on everyone else. Under option "a", if everyone else was financially affected by $5, but a public official was affected by $1,000,000, it would not matter as long as at least 10% of the population was affected in some way.

Commissioner Makel noted that the financial effect on the tenant might be a low dollar amount compared to the landlord, but that dollar amount might be a large percentage of their income.

Ms. Menchaca responded that, in other regulations, if an individual owns a thousand properties and another individual owns one property, and there is a proposal to impose a 1% assessment on everyone affected, both individuals will be allowed to participate in the decision because both are affected by 1%, even though the actual dollar amounts of the effect are different.

Commissioner Swanson asked how the population is determined for a specific area.

Ms. Menchaca stated that population facts are usually furnished by the public official, probably assisted by the city attorney. Those facts could include a city or a portion of a city, she explained.

Chairman Getman pointed out that this was being drafted to regulate more than just rent control, and could cover different kinds of laws affecting property.

Commissioner Swanson noted that the "10 percent" rule would have a very different effect in an urban area than in a rural area, and noted that it could create a big disparity. She questioned whether there was any other way to determine the benefit, other than by the percentage of the population.

Ms. Menchaca responded that, other than the numerical threshold of 5,000 individuals, no other method had been suggested.

Commissioner Swanson stated that it is all tied into economic advantage, and not tied into people.

Ms. Menchaca responded that in either situation, in order to be at this stage, the impact on the public official would already have been significant enough to be conflicted out. She noted that even in the urban setting, the effect on the public official would have been of a large magnitude in order to be considered material, but added that option "b" was geared more for rent control types of decisions.

Ms. Menchaca explained that she was bothered by option "a" because it treated direct and indirect effects the same, and because despite the magnitude of the effect on the public official compared to everyone else, the public official could still participate

Ms. Marshall explained that there are exemptions to buildings affected by rent control, and therefore one landlord may be more affected than other landlords.

Commissioner Makel suggested that Section 18707.1(a)(1) defined a significant segment of the jurisdiction and would take care of those situations.

Chairman Getman cited an example in which one landlord owned a large number of apartments.

Ms. Marshall pointed out that option "a" does not require "substantially the same" affect, and that tenants and owners and even homeowners would be treated the same.

Ms. Menchaca noted that another distinction between options "a" and "b" is that option "b" links the public official's economic interest to the decision.

Mr. Wieg suggested that option "a" be clarified to be applicable to indirect effects, and he discussed the language issues.

Mr. Wieg stated that he objected to option "b" because it was too complicated.

Commissioner Deaver suggested that Mr. Willis, Mr. Wieg, and Ms. Marshall try to work out a compromise solution acceptable to both sides.

Ms. Marshall stated that she would be willing to do that, but that, based on past experience, she was not sure that an agreement could be reached.

Chairman Getman suggested that the Commission make policy decisions and have staff redraft the regulation.

Chairman Getman noted that the Commission did not want public officials to vote on issues in which they had a direct financial effect. There was no objection from the Commission.

Chairman Getman asked whether the rule should apply to any landlord, or to set a number of units the landlord must own in rent control issues. Chairman Getman stated that a large commercial interest is qualitatively different.

Commissioner Deaver did not like the idea of setting a number of units, and then telling a public official that they cannot vote because they own one more unit than allowed. The whole issue, he asserted, revolved around the fact that half of the debate is excluded from participating in the debate, and that both sides needed to be heard. He pointed out that both tenants and landlords have an economic interest.

Chairman Getman stated that the economic interests of landlords and tenants can be very different, because one is a business interest and one is a personal interest.

Commissioner Swanson stated that it was not the same type of ownership, and that the person who owns three units should be treated differently than the person who has a limited partnership or owns hundreds of units.

Chairman Getman noted that the person who has five units should vote, but the person who has a large commercial property interest should not vote.

Commissioner Makel stated that all landlords should be allowed to vote because the purpose of the conflict rules is to address those situations where public officials have a

motivation that is self-interested, and the tenant has that in the rent control issues. It did not matter how big the interest is, she added, because both sides have self interest.

Commissioner Deaver stated that it might be better to let everyone vote as long as all their interests are disclosed. He noted that some public officials use the conflict rules as an excuse not to vote.

Ms. Menchaca stated that the "proportional" language in option (d)(2) would take care of most situations where the number of units is an issue. She asked the Commission whether they wanted the exception to apply if there were multiple economic interests, such as real property interest plus a business interest. She suggested that multiple economic interests be dealt with in this part of the regulation.

The Commissioners were in agreement that the economic interests should be dealt with in one section of the regulation.

Commissioner Deaver questioned how the "proportional" language would work.

Chairman Getman noted that, while using a specific number can be arbitrary, as the McPherson Commission pointed out, it can also be more useful because it is a clear rule.

Mr. Willis enumerated how many units were owned by each of the current San Francisco Board of Supervisors.

Commissioner Deaver questioned why this was an issue, since only one member of the Board appeared to have a possible conflict.

Chairman Getman suggested that clarifying the current rule might clear up the problem.

Mr. Wieg stated that both the tenant and landlord trigger a conflict, and that the current rule is a perceived injustice because the tenant can vote but the landlord cannot. He noted that there is confusion about when the landlord could vote. He suggested that if both sides are conflicted, but the issue spreads broadly across the populace, as rent control issues will, then there is a public generally situation.

Ms. Marshall stated that the Act states that a person cannot vote if there is a financial interest.

Commissioner Deaver stated that the tenants are affected exactly the same way as the landlords.

Ms. Marshall responded that they are not affected the same way according to the legal definition.
Mr. Willis noted that the tenant exception is through the "public generally" definition and through the regulation which states that a "month-to-month" tenancy is not a financial interest.

Ms. Menchaca noted that the "month-to month" regulation could be amended, but that if it were amended, the problem would still exist in most situations where more than 5,000 tenants or more than ten percent of the population would be affected.

Commissioner Makel stated that everyone should be covered by the "public generally" definition of the statute.

Ms. Menchaca suggested the following modifications to option "b":

1. Instead of saying "The effect of a governmental decision on residential real property . . .," the Commission not limit the rule to residential real property, but expand it to read, "The effect of a governmental decision on an official's economic interest. . . ," which would ensure that a person with real property and business interests would be included in this regulation.
2. Adopt the language in subdivision (a), which limits the decision to certain kinds of decisions.
3. Adopt subdivision (a)(1).
4. Adopt subdivision (a)(2), with the provision that the decision has to affect 10 percent of residential property owners in the jurisdiction.
5. Adopt subdivision (a)(3), Decision 13, option (d)(2).
6. Adopt subdivision (a)(4).
7. Eliminate subdivision (a)(5).
8. Eliminate subdivision (b).

Chairman Getman noted that eliminating subdivision (a)(4) would result in including people who own commercial property that is affected by a decision.

Ms. Menchaca responded that subdivision (a)(4) could be left in, but it would mean that the ownership of more than one commercial business would be a problem.

Ms. Menchaca explained that the Commission had already made significant improvements in the general rule, and that this would take care of those situations where the public official had more than three rental units.

Ms. Menchaca stated that the codification of *Ferraro* would remain.

Mr. Willis expressed his concern that a person who has a small interest in a business entity does not have a real property interest, technically, and was concerned that the language in subdivision (a)(4) might affect whether that public official can vote.

Ms. Menchaca suggested that she could develop alternative language on that issue.

Commissioner Makel motioned that the Commission accept Ms. Menchaca's suggestions. Commissioner Deaver seconded the motion.

Chairman Getman stated that this was better than option "a", but she was not comfortable with allowing owners of large numbers of property to vote on this issue. She stated that she would not vote for this motion.

Decision 14: Ms. Menchaca explained that this decision involved a technical change which would change the number of feet a public official's residence must be from the boundaries of the property in question in order for the public official to vote on an issue involving the property in question. She noted that this would make the regulation comport to the Project D decisions.

Ms. Menchaca noted that subdivisions (4) of Section 18707.3 ensured that a sufficient number of people were affected by the decision, and subdivision (5) of 18707.3 ensured that a person who owned more than one acre in an area where most parcels were one acre lots. She added that the Commission may want to amend this Section at a future date.

There was no objection from the Commission.

Decision 15: Ms. Menchaca stated that this proposed regulation addressed the business climate issues that have been raised. She noted that the regulation was drafted to address situations where the general rule does not allow a public official to participate. Under certain conditions outlined in the proposed regulation, the public official would be allowed to participate, she explained. She noted that those factors link the triggering conflict to a conflict based on a business conflict and a relationship by the public official to the particular industry, trade or profession that is being impacted. Options were added, she continued, similar to the regulation that has either the "substantially the same" aspect to it, or the "proportional" aspect to it.

Ms. Menchaca stated that this regulation may not be needed if changes in the percentages of businesses are made, or if Decision 15, option "a" is adopted.

Chairman Getman suggested that this decision be tabled until after the decision regarding whether to change the percentages is made. She asked that Ms. Menchaca agendize the "business percentage" issue for the October, 2000 meeting.

Mr. Wieg stated they could make this work, but preferred the ten percent solution.

There was no objection from the Commission.

Item #6. Prenotice Discussion: CalPERS Audit Regulations.

Counsel Scott Tocher presented this issue, giving a broad overview of the CalPERS Board. He noted that recent legislation required that the Commission to adopt regulations concerning the process of auditing and reporting, and that he was presenting two regulations concerning the auditing aspects for the Commission's consideration.

Mr. Tocher explained that the proposed record-keeping requirements for Section 18453, would require CalPERS candidates to maintain records necessary to file reports and to provide information necessary in an audit. He explained that proposed Section 18997 pertained to the conduct of the audits.

There was no objection from the Commission to Section 18453.

Decision 1: Chairman Getman suggested that the FPPC select the candidates for audits.

There was no objection from the Commission.

Decision 2: Mr. Tocher explained that the audit threshold proposed utilized a similar system used by statewide and legislative candidates. He stated that CalPERS elections are somewhat unique, and recommended that a level of $1,000 be adopted, noting that it would require that all candidates who have received $1,000 in contributions would be subject to audit, and candidates who receive less than $1,000 in contributions would be subject to random audits. Mr. Tocher recommended that the Commission audit 25% of those candidates receiving less than $1,000, and that the Commission study the issue again in 2003.

Marte Cantanos, with the California Public Employees Retirement System, presented a chart to the Commission outlining the manner in which other candidates are treated with regard to audit thresholds. He explained that if staff's recommendations were adopted, CalPERS candidates would be treated materially differently than all other candidates. Mr. Castanos stated that CalPERS candidates spend between $500 and $2,000 for an election. He pointed out that the point of the audit regulations is to provide a check to the candidates so that they know that there is a reasonable chance that they will be audited, and therefore they will comply with their campaign reporting requirements. He suggested that the threshold should be $25,000.

Chairman Getman pointed out that another purpose of the audit was to determine how much money was being spent on campaigns, so that more appropriate thresholds could be determined at a future date.

Mr. Castanos stated that the amount of money being spent for campaigns will be known because reports will be filed. He noted that only 25% of legislative candidates are audited.

Chairman Getman responded that legislative candidates have been filing reports for many years, and therefore the Commission already had enough information to determine what was a reasonable audit threshold for them.

Mr. Castanos questioned what could be learned about the CalPERS contributions in the next three years that would show that 100% of all CalPERS candidates must be audited.

Commissioner Makel noted that, currently, the Commission audits 100% all statewide candidates who receive over $25,000 in contributions. She explained that it would make sense to use that same 100% figure for CalPERS candidates, but to determine a proportionate dollar figure. She did not agree that $25,000 would be an appropriate figure because CalPERS candidates were so different from statewide candidates and because they do not spend as much money.

Mr. Castanos suggested that the Commission compare them to local candidates.

Chairman Getman stated that she would support auditing more local candidates, but that there was not enough staff to do that because there were so many local candidates.

Mr. Tocher explained that the pool of local candidates was drastically different than the CalPERS candidates, as shown in Exhibit E. He noted that using the local candidates formula would result in only one CalPERS elected official being audited. He stated that the candidates should be treated similarly to other candidates in terms of being subject to audit and in terms of fairness, but not in terms of threshold levels.

Commissioner Deaver stated that the Commission should accept staff's recommendation for three years.

Chairman Getman stated that the Commission should require mandatory audits for candidates who receive contributions of $1,000 or more and require random audits for 25% of those candidates who receive less than $1,000 in contributions, and sunset the issue in the year 2003.

There was no objection from the Commission.

Item #7. Prenotice Discussion: Proposed Amendments to Regulations 18702.1, 18730, 18940.2, 18942.1, and 18943 Gift Limit CPI Increase.

Commissioner Makel motioned that the proposed amendments be approved. Commissioner Deaver seconded the motion. There being no objection, the motion passed.

Item #8. Adoption of Regulation 18465--Disclosure of Lobbying Entity Identification Numbers.

There was no objection from the Commission to approving this proposed regulation.

Technical Assistance Division Chief Carla Wardlow reported that Technical Assistance staff had just completed over twenty seminars for candidates and treasurers up and down California, and has responded to over seventy-five phone calls a day. Many of those seminars, she noted, were conducted on evenings and Saturdays, and average about seventy people per seminar. She commended her staff for their hard work.

Chairman Getman noted that the staff had received great reviews on the seminars.

Ms. Wardlow stated that more than twice as many people have been coming to the seminars than were signed up, and the seminars have been working very well. She noted that Political Reform Consultant Adriane Korczmaros had developed a very good Power Point program for the seminars.

Item #9. Consideration of Third Quarterly Review of CY2000 Regulation Calendar; Staff recommendations.

The Commission accepted the staff recommendation without objection.

Items #10, #11, #12, #13, #14.

Commissioner Makel motioned that items #10, #11, #12, #13, #14 be approved. Commissioner Deaver seconded the motion. There being no objection, the following items were approved:

Item #10. Failure to Timely File Late Contribution Reports – Streamlined Procedure.

a. ***In the Matter of Robert Emami*, FPPC No. 2000-401.** (1 count).
b. ***In the Matter of Thomas Jordan II*, FPPC No. 2000-416.** (1 count).
c. ***In the Matter of Tom Hayden*, FPPC No. 2000-417.** (1 count).
d. ***In the Matter of Zora Charles*, FPPC No. 2000-422.** (2 counts).
e. ***In the Matter of Peter C. Foy & Associates*, FPPC No. 2000-426.** (1 count).
f. ***In the Matter of Lopez, Hodes, Restaino, Milman & Skikos*, FPPC No. 2000-430.** (1 count).
g. ***In the Matter of Northwest Pipe Company*, FPPC No. 2000-442.** (1 count).
h. ***In the Matter of Central Financial Acceptance Corporation*, FPPC No. 2000-449.** (1 count).
i. ***In the Matter of Cohen Medical Corporation*, FPPC No. 2000-450.** (3 counts).
j. ***In the Matter of David Ring*, FPPC No. 2000-454.** (1 count).
k. ***In the Matter of Knight & Associates*, FPPC No. 2000-467.** (3 counts).
l. ***In the Matter of Gordon Holdings LP, FPPC No. 2000-469*.** (1 count).
m. ***In the Matter of Harold Asher*, FPPC No. 2000-471.** (1 count).
n. ***In the Matter of Hewlett Packard*, FPPC No. 2000-473.** (4 counts).
o. ***In the Matter of James E. Holman*, FPPC No. 2000-480.** (2 counts).
p. ***In the Matter of UFCW Region 8 State Council (ID#910874)*, FPPC No. 2000-513.** (1 count).

Item #11. Failure to Timely File Statements of Economic Interests - Expedited Procedure.

a. ***In the Matter of Kenneth Irvine*, FPPC No. 2000/384.**

b. ***In the Matter of Rhoda Ann Daclison*****, FPPC No. 99/795.**

Item #12. ***In the Matter of Dudek & Associates*****, FPPC No. 2000/198.**

Item #13. ***In the Matter of Nancy Pollard, Committee to Elect Nancy Pollard Judge, and Ann M. Garten*****, FPPC No. 99/227.**

Item #14. ***In the Matter of Republican National Committee - California Fund*****, FPPC No. 99/455.**

Item #15. Executive Director's Report.

Executive Director Wayne Strumpfer noted that he was recommending increased training for staff, and increased national exposure. He explained that three staff members will be participating in the COGEL conference this year, and he recommended that this policy be continued in future years.

Mr. Strumpfer reported that he will be submitting a budget report to the Commissioners every four to six months, comparing actual costs with the proposed budget, and that he will present an annual budget for their approval each year.

There being no objection, the Commission approved the budget for fiscal year 2001-2002.

Item #16. Commission Planning Objectives for Calendar Year 2001.

Chairman Getman noted that there were two major items for 2001. The first, she explained, was to work on an Enforcement plan and to look for other areas of streamlining while working on the targeted enforcement programs in money-laundering and other conflict of interest areas. The second major item, she continued, was to undertake a massive regulatory review on campaign reporting.

There was no objection from the Commission.

Commissioner Swanson asked for clarification of how groups will be contacted for input to the Commission.

Chairman Getman explained that staff has already started contacting people, and that they are letting people know about the projects. She noted that staff will gather mailing lists in an effort to contact everyone who may have an interest in the discussions.

Commissioner Deaver suggested contacting the California Newspaper Publishers Association.

Chairman Getman explained that contacting people about the meetings is sometimes the hardest part of the project, and that it is a priority.
Commissioner Swanson suggested that city clerks be notified.

Chairman Getman responded that the city clerks were already on the list. She noted that the program can also be announced at the seminars Technical Assistance Division is conducting.

Chairman Getman stated that she wanted to have a presentation outlining what disclosure is required by the Act. She hoped to have the presentation break down each element of the reporting system into levels, including (1) something that is actually required by the law, (2) something that is not spelled out in the statute, but seems necessary to make the statute work, and (3) things that may not fall into the first two catagories, but may need to be required.

Commissioner Deaver suggested a day of briefing for the new Commissioners, providing them with an overview of the work of the Commission.

Item #17. Legislative Report.

Commissioner Swanson suggested that the report be received and filed.

There was no objection from the Commission.

Item #18. Litigation Report.

Chairman Getman suggested that the report be received and filed.

There was no objection from the Commission.

The meeting was adjourned at 2:55 p.m.

Dated: September 26, 2000

Respectfully submitted,

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Sandra A. Johnson
Executive Secretary

Approved by:

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Chairman Getman